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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,378	10/02/2003	Philip T. Ward	30859 CNT1	4032

23589 7590 11/01/2004

HOVEY WILLIAMS LLP  
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KANSAS CITY, MO 64108

EXAMINER
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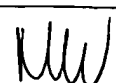
NGUYEN, CHI Q

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/678,378	<b>Applicant(s)</b> WARD, PHILIP T.	
	<b>Examiner</b> Chi Q Nguyen	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 3-9 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This office action is in response to the applicant's amendment filed on 8/12/04.

### ***Terminal Disclaimer***

The terminal disclaimer filed on 8/12/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,655,650 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Aftreth (US 3,434,689).

In regard to claim 1, Aftreth teaches concrete form panels comprising a load-bearing face plate 10 having a front face 32, 33, structure 31 projecting rearwardly from the face plate 32, 33 a flexible barrier element 30 mounted on the structure 31 in spaced relationship to the front face (fig. 2). Moore teaches the similar claimed structures for the concrete form system; these structures would inherently be capable of performing the same functions such as receiving poured concrete in one face and the flexible barrier element mounted on the structure opposite and spaced from the face for

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impeding migration when connected to another concrete forming panel since the claim is drawn to one panel.

In regard claim 2, the faceplate having an outer edge margin 12, the structure 31 being located adjacent the outer edge margin and including part of a frame 8, 9 (fig. 2).

In regard claim 11, the structure 31 having an elongated retaining slot 25 within which the barrier element 30 is received.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aftreth.

Aftreth teaches the structural elements for the concrete forming panels as set forth except for the slot and the barrier element projecting generally toward the front face at an acute angle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the slot and the flexible element at an acute angle, since it has been held that arranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. The motivation for doing so would have been to seal concrete forming panels having the similar angles.

### ***Allowable Subject Matter***

Claims 3-9 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 8/12/04 have been fully considered but they are not persuasive because as set forth, the applicant's claimed invention is drawn to one panel for forming concrete. Therefore, the concrete material is not necessary poured between the two panels' front face, wherein the flexible element is mounted on the structure opposite and spaced from the front face.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-

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1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.)

*en*

CQN

10/15/04



**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**